

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9**

75 Hawthorne Street
San Francisco, California 94105

**** FILED **
04 SEP 2020
U.S. EPA - REGION IX**

IN THE MATTER OF:)	DOCKET NO. CWA-09-2020-0049
)	
Pacific Seafood-Eureka, LLC)	COMPLAINT, CONSENT AGREEMENT
Eureka, California)	AND FINAL ORDER
)	
Respondent.)	<i>Class II Administrative Penalty Proceeding under</i>
)	<i>Section 309(g) of the Clean Water Act, 33 U.S.C.</i>
)	<i>§ 1319(g), and 40 C.F.R. §§ 22.13(b) and 22.18</i>

COMPLAINT/CONSENT AGREEMENT

I. AUTHORITY AND PARTIES

1. This is a Class II civil administrative penalty proceeding under Section 309(g)(1)(A) and 2(B) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(1)(A) and 2(B), and 40 C.F.R. Part 22 (*Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*).
2. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency (EPA) is authorized to assess administrative penalties against persons who violate Section 307 of the CWA, 33 U.S.C. § 1317. The Administrator has delegated this authority to the Regional Administrator of EPA Region 9, who in turn has delegated this authority to the Director of the Enforcement and Compliance Assurance Division (ECAD).
3. Respondent is Pacific Seafood-Eureka, LLC.
4. This Consent Agreement and Final Order (CA/FO), which contains the elements of a complaint required by 40 C.F.R. § 22.14(a), simultaneously commences and concludes this penalty proceeding, as authorized by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

NOW THEREFORE, before the taking of any testimony, without adjudication of any issue of fact or law, and upon consent by EPA and Respondent, it is hereby STIPULATED, AGREED, AND ORDERED:

II. STATUTORY AND REGULATORY FRAMEWORK

5. CWA Section 301(a), 33 U.S.C. § 1311(a), makes it unlawful for a person to discharge pollutants from a point source into waters of the United States, except as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.

6. CWA Section 307(d), 33 U.S.C. § 1317(d), prohibits any owner or operator of any source to operate any source in violation of any effluent standard or prohibition or pretreatment standard promulgated under Section 307(b) of the CWA, 33 U.S.C. § 1317(b).
7. Pursuant to CWA Section 307(b), 33 U.S.C. § 1317(b), EPA promulgated regulations codified at 40 C.F.R. Part 403, entitled General Pretreatment Regulations.
8. The General Pretreatment Regulations at 40 C.F.R. Part 403 relevant to this matter include:
 - (1) 40 C.F.R. § 403.3(q) (Publicly Owned Treatment Works), which defines a POTW to mean a treatment works as defined by CWA § 212, 33 U.S.C. § 1292, which is owned by a State or municipality, including any devices, methods, and /or systems that, at a minimum, store, treat, or dispose of municipal or industrial wastes, including waste in combined storm water and sanitary sewer systems.
 - (2) 40 C.F.R. § 403.3(f) (Control Authority), which defines a Control Authority, in relevant part, to mean either, EPA, the State, or the POTW if the POTW's Pretreatment Program Submission has been approved in accordance with the requirements of 40 C.F.R. § 403.11.
 - (3) 40 C.F.R. § 403.3(j) (Industrial User), which defines an industrial user as a source of Indirect Discharge, which in turn is defined at 40 C.F.R. § 403.3(i) to mean the introduction of pollutants into a POTW from any non-domestic source regulated under CWA §§ 307(b), (c), or (d), 33 U.S.C. § 1317(b), (c), or (d).
 - (4) 40 C.F.R. § 403.3(v)(ii) (Significant Industrial User), which defines a significant industrial user as one designated as such by the Control Authority because it has a reasonable potential for adversely impacting the POTW's operations.
 - (5) 40 C.F.R. § 403.5(d) (Local limits), which provides that where specific prohibitions or limits on pollutants or pollutant parameters are developed by a POTW in accordance with the General Pretreatment Regulations at 40 C.F.R. § 403.5(c), such local limits shall be deemed Pretreatment Standards for the purposes of section 307(d) of the CWA.
 - (6) 40 C.F.R. § 403.17 (Bypass), which prohibits bypass unless unavoidable to prevent loss of life, personal injury, or severe property damage or if there were no feasible alternatives to the bypass, as set forth in the regulations at 40 C.F.R. § 403.17(a)(1).
9. On September 22, 1989, EPA approved the State of California's pretreatment program, administered by California's Regional Water Quality Control Boards. 54 Fed. Reg. 40664 (October 3, 1989). On June 2, 1994 the North Coast Regional Water Quality Control Board approved the City of Eureka's (City) current Pretreatment Program, codified at Title 5, Chapter 50 of the Eureka Municipal Code (EMC).
10. EMC Section 50.020(B) provides that "[a]n industrial user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation."

11. EMC Section 50.020(B)(3) prohibits the discharge of “[s]olid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in interference, but in no case solids greater than one-inch or 25.4 millimeters in any dimension.”
12. EMC Section 50.051 provides, in part, that “[i]t shall be unlawful for any significant industrial user to discharge wastewater into the city's POTW without first obtaining a wastewater discharge permit from the City Manager.”
13. EMC Section 50.055 requires wastewater discharge permits to “include such conditions as are reasonably deemed necessary by the City Manager to prevent pass through or interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal, protect ambient air quality, and protect against damage to the POTW.” Specifically, EMC Section 50.055(B)(4) provides wastewater discharge permits may require “development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or routine discharges.”
14. Pursuant to CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19.4, EPA may assess a Class II civil administrative penalty against a person for violations of Sections 301(a) or 307 of the CWA. For violations that occurred after November 2, 2015, where penalties are assessed on or after January 13, 2020, EPA may assess a Class II civil administrative penalty up to \$22,320 per day of violation, not to exceed \$278,995 in total.

III. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS, AND CONCLUSIONS OF LAW

15. Respondent is a limited liability company, an “association,” and therefore a person within the meaning of CWA Section 502(5), 33 U.S.C. § 1362(5).
16. Since at least 1986, Respondent has owned and/or operated a seafood processing facility located along Eureka Slough at 1 Commercial Street, Eureka, California, hereinafter the “Facility.” Respondent’s industrial activities fall under SIC Code 2092 (Prepared Fresh or Frozen Fish and Seafoods).
17. The City owns and operates a POTW, the Elk River Wastewater Treatment Plant, for the purpose of treating industrial and domestic wastewater. At all times relevant to this matter, Respondent discharged industrial wastewater to the City’s POTW and is therefore an “industrial user” as defined by 40 C.F.R. § 403(3)(j).
18. Respondent discharges wastewater and associated biological materials such as shrimp and oyster shells and other “pollutants” as that term is defined at Section 502(6) of the CWA, 33 U.S.C. § 1362(6), to the City’s sanitary sewer that flows to the City’s POTW.
19. The Facility discharges an average of 40,000 gallons of industrial process wastewater per day to the POTW and is a Significant Industrial User as that term is defined at 40 C.F.R. § 403.3(v)(ii).
20. As part of its Pretreatment Program, the City issued Wastewater Discharge Permit Number 37 (Permit) to Respondent on October 3, 2014 (reissued September 30, 2019) in accordance with

Section 50.051 of the City Municipal Code, which requires the following management practices necessary to prevent accidental discharge of hazardous materials:

Part 1.C – The permittee shall remove or double-contain any hazardous materials, stored near drains, in a manner which will ensure that accidental spills or leaks will not enter the storm drain or sanitary sewer.

Part 2.E. Drums or other vessels used to collect and store hazardous materials shall be sealed, labelled, and stored in a protective manner.

21. On October 31, 2016, the City issued Respondent a Notice of Violation (NOV) after the Facility allowed large amounts of shrimp shells to bypass the Facility's pretreatment system that same day and interfere with the City's headworks. On November 4, 2016, Respondent represented to the City that corrective action (employee training) had resolved the issue.
22. On August 17, 2017, the City issued Respondent another NOV after the Facility allowed large amounts of shrimp shells to bypass the Facility's pretreatment system and cause a blockage in the City's Commercial Street lift station pumping system on July 19 and August 8, 2017. On August 21, 2017, Respondent represented to the City that that corrective action (again, employee training) had resolved the issue.
23. On September 19, 2017, the City issued another NOV for pretreatment violations observed by the City on August 18 and September 12, 2017 at a City lift station. In both cases, it appeared Respondent had allowed solid waste (shrimp shells, gloves, and other solids larger than an inch in dimension) to bypass the Facility's pretreatment system and discharge to the City's sanitary sewer and collect in the City's Commercial Street lift station. On September 20, 2017, Respondent represented to the City that corrective action (again, employee training, but also an effort to engineer a diversion of all production water to the Facility's pretreatment system) was being taken to resolve the issues.
24. On August 15, 2018, representatives of EPA, accompanied by staff from the North Coast Regional Water Quality Control Board and the City's Public Works Department, inspected the Facility and identified several areas of concern associated with operation and maintenance of the Facility's pretreatment system, including:
 - (1) A pipe from the Facility's ozone generating system (a sanitizer for fish processing) was leaking under the Facility's dock.
 - (2) Multiple vertical pipes running from the Facility's three fish conveyor pits in the infeed room to beneath the dock that were not capped and had the potential for discharge to the Eureka Slough.
 - (3) An air vent on the white PVC pipe leading to the area underneath the Facility's dock was positioned in a manner that potentially could result in the disposal of process wastewater, chemicals, or other materials to Eureka Slough.
 - (4) Wastewater from the de-shelling process was observed entering a storm drain in an area of the Facility where shrimp shells are loaded onto trucks to be hauled offsite.
 - (5) Respondent was using City water to rinse off oysters on the Facility's dock and discharging the rinse water off the side of the dock to the Eureka Slough and was using water pumped from the Eureka Slough up onto the Facility's deck to rinse off totes

containing live crabs and discharging the rinse water off the side of the dock to the Eureka Slough.

- (6) It was unclear whether three pipes were discharging rainwater from the Facility's roof to the Eureka Slough or to the City's sanitary sewer.
- (7) Wastewater from the indoor shrimp processing area was bypassing the Facility's pretreatment system by flowing over a berm to a floor drain that discharges directly to the City sewer.
- (8) It was unclear whether Respondent had made the City aware of Respondent's plans to install new equipment in the crab processing room as required by 40 C.F.R. § 403.12(g), which requires Significant Industrial Users to notify the control authority i.e., the City, in advance of any substantial change in the volume or character or pollutants in the discharge.
- (9) The Facility lacked adequate secondary containment in its outdoor chemical storage area.
- (10) The Facility lacked adequate secondary containment in its indoor bulk chemical storage area.
- (11) A drum of used oil stored in the pretreatment building had an accumulation start date on its label of October 4, 2015 in possible violation of hazardous waste generator standards.
- (12) Process wastewater from shrimp processing had the potential to discharge to a storm drain in the loading dock area.

25. On October 12, 2018, EPA provided the Respondent with an inspection report that described the areas of concern identified by EPA during the August 15, 2018 inspection.
26. On October 19, 2018, the City issued Respondent a NOV, invoice of damage caused by illicit discharge, issuance of a \$1,000 administrative citation, and a compliance order. The NOV provided that an October 5, 2018 City inspection found a screen designed to prevent oyster shells and other debris from discharging to the City's system was not in place, resulting in excessive amount of large oyster shells waste discharging to the sanitary sewer system. The NOV also provided that on October 11, 2018, the City found the Facility had discharged gloves and product labels to the sewer and these solids were clogging the City's Commercial Street lift station.
27. On November 21, 2018, the Respondent provided a letter documenting corrections of most of the areas of concern observed by EPA during its August 2018 inspection, and provided a schedule to correct the remaining areas of concern by April 1, 2019.
28. On October 29, 2019, the City provided Respondent with a Pretreatment Inspection Report that provided a Warning NOV for failure to provide adequate secondary containment for a drum of waste oil located in the Facility's outdoor chemical storage shed area upgradient of a storm drain, and a drum of hypochlorite solution located in an outside area adjacent to the Facility's truck loading dock area.
29. On November 12, 2019, Respondent provided EPA with evidence that Respondent had corrected the remaining areas of concern identified by EPA during its August 2018 inspection as scheduled by April 1, 2019, and that on May 28, 2019 Respondent had completed its installation of a pretreatment system at the Facility to prevent further discharges of wastewater from the indoor shrimp processing area directly to the sanitary sewer. Respondent also provided evidence that it had engaged the North

Coast RWQCB in discussions to obtain appropriate state authorization for the discharges of rinse water from the Facility dock.

30. On January 24, 2020, the City informed EPA that Respondent had adequately corrected the secondary containment issues raised in the City's October 29, 2019 Warning NOV by November 15, 2019.

IV. ALLEGED VIOLATIONS

31. On at least one day, on August 15, 2018, Respondent violated CWA Section 301(a), 33 U.S.C. § 1311(a), by discharging pollutants from a point source into waters of the United States without NPDES permit authorization.
32. Between October 31, 2016 and November 15, 2019, Respondent violated CWA Section 307(d), 33 U.S.C. § 1317(d) on at least six (6) days by operating a source in violation of pretreatment standards as established under Section 307(b) of the CWA, 33 U.S.C. § 1317(b).

V. ADMINISTRATIVE PENALTY

33. In consideration of the penalty factors of CWA Section 309(g), 33 U.S.C. § 1319(g), Respondent shall pay to the United States a civil administrative penalty in the amount of seventy-four thousand five hundred dollars (**\$74,500**) within ninety (90) calendar days of the Effective Date, as defined in Section X of this CA/FO.
34. Respondent shall make penalty payment by one of the options listed below:

- (1) Check Payment. Payment by a cashier's or certified check shall be made payable to "Treasurer, United States of America" and be mailed as follows:

i. *If by regular U.S. Postal Service Mail:*

U.S. Environmental Protection Agency
Fines and Penalties
PO BOX 979077
St. Louis, MO 63197-9000

ii. *If by overnight mail:*

U.S. Environmental Protection Agency
Government Lockbox 979077
USEPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

- (2) Automated Clearinghouse Payment: Payment by Automated Clearinghouse (ACH) via Vendor Express shall be made through the U.S. Treasury as follows:

U.S. Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

- (3) Fedwire: Payment by wire transfer to EPA shall be made through the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
(Field Tag 4200 of the Fedwire message should read: D 68010727 Environmental Protection Agency)

- (4) Online Payment: This payment option can be accessed from the information below

Go to www.pay.gov
Enter “SFO Form Number 1.1.” in the search field
Open “EPA Miscellaneous Payments – Cincinnati Finance Center” form and complete required fields

Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at (513) 487-2091.

35. To ensure proper credit, Respondent shall include the following transmittal information with the penalty payment: (i) Respondent’s name (as appeared on the CA/FO), complete address, contact person, and phone number; (ii) the EPA case docket number; (iii) the EPA contact person; and (iv) the reason for payment.
36. Concurrent with the payment, Respondent shall send a true and correct copy of the payment and accompanying transmittal information to the following addresses:

Regional Hearing Clerk
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street (ORC-1)
San Francisco, CA 94105

Jim Polek
Enforcement Division
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street (ENF 3-1)
San Francisco, CA 94105
Polek.Jim@epa.gov

37. Respondent shall not, and shall not allow any other person to, deduct any penalties and interest paid under this CA/FO from federal, state, or local taxes.
38. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Respondent fails to pay the assessed penalty on time, EPA may request the U.S. Department of Justice to bring a civil action to recover the overdue amount, plus interest at currently prevailing rates from the Effective Date of this CA/FO. In such an action, the validity, amount, or appropriateness of the assessed penalty shall not be subject to review. In addition to any assessed penalty and interest, Respondent shall pay attorney fees, costs for collection proceedings, and a quarterly nonpayment penalty, which shall equal 20% of the aggregate amount of Respondent's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter, for each quarter during which such failure to pay persists. EPA may also take other debt collection actions as authorized by law, including, but not limited to, the Debt Collection Act, 33 U.S.C. § 3711, and 33 C.F.R. Part 13.
39. Respondent submitted a certified statement on June 3, 2020 to EPA indicating that Respondent has a limited ability to pay a civil penalty in this matter. EPA considered the certified statement when agreeing to the civil penalty terms included in this CA/FO. Respondent certifies to the truth and accuracy of the information and representations made to EPA relating to Respondent's financial conditions. Respondent acknowledges that it may be subject to prosecution under federal law by providing false or inaccurate information to EPA.

VI. APPLICABILITY

40. This CA/FO shall apply to and be binding on Respondent, Respondent's officers, directors, partners, agents, employees, contractors, successors and assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations acting under, through, or for Respondent shall not excuse any failure of Respondent to fully perform its obligations under this CA/FO. Changes in ownership, real property interest, or transfer of personal assets shall not alter Respondent's obligations under this CA/FO.

VII. RESPONDENT'S ADMISSIONS AND WAIVERS

41. In accordance with 40 C.F.R. § 22.18(b), for the purpose of this proceeding, Respondent:
- a. Admits the jurisdictional allegations of the Complaint;
 - b. Except as set forth in Paragraph 39, neither admits nor denies the facts stipulated in this Consent Agreement;
 - c. Consents to the assessment of the civil administrative penalty set forth in Section V of this Consent Agreement, and to all conditions specified in this CA/FO;
 - d. Waives any right to contest the allegations set forth in this Consent Agreement; and
 - e. Waives its right to appeal this proposed Final Order.

VIII. RESERVATION OF RIGHTS

42. In accordance with 40 C.F.R. §§ 22.18(c), full payment of the penalty set forth in this CA/FO only resolves Respondent's CWA civil penalty liabilities for the violations specifically alleged herein and does not in any case affect the right of EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

43. This CA/FO is not a permit or modification of any existing permit issued pursuant to any federal, state, or local laws or regulations, and shall in no way relieve or affect Respondent's obligations under any applicable federal, state or local laws, regulations, or permits.

IX. ATTORNEY FEES AND COSTS

44. Unless otherwise specified, each party shall bear its own attorney fees and costs.

X. EFFECTIVE DATE AND TERMINATION

45. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the Effective Date of this CA/FO is the date that the Final Order, having been signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk. This CA/FO shall terminate when Respondent has complied with the requirements of this CA/FO in full.

XI. PUBLIC NOTICE

46. Pursuant to CWA Section 309(g)(4), 33 U.S.C. §1319(g)(4), and 40 C.F.R. § 22.45(b), this Consent Agreement is subject to public notice and comment prior to issuance of the proposed Final Order. Complainant reserves the right to withhold or withdraw consent to this Consent Agreement if public comments disclose relevant and material information that was not considered by Complainant in entering into this Consent Agreement. Respondent may withdraw from this Consent Agreement only upon receipt of written notice from EPA that it no longer supports entry of this Consent Agreement.

47. Pursuant to CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1), EPA has consulted with the State of California regarding this penalty action.

For Complainant the U.S. Environmental Protection Agency, Region 9:

AMY MILLER-
BOWEN

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MILLER-BOWEN
Date: 2020.07.23
17:00:32 -07'00'

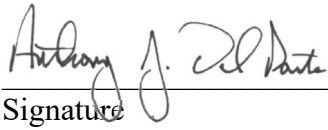
Amy C. Miller-Bowen, Director
Enforcement and Compliance Assurance Division
U.S. EPA Region 9

Date

Of Counsel:

Rich Campbell, Attorney-Advisor
Office of Regional Counsel
U.S. EPA Region 9

For Respondent Pacific Seafood - Eureka, LLC



Signature

Anthony J. Dal Ponte

Name (printed)

July 16, 2020

Date

Title: General Counsel

FINAL ORDER

It is Hereby Ordered that this Consent Agreement and Final Order (U.S. EPA Docket No. CWA-09-2020-0049) be entered and that Respondent shall pay a civil penalty in the amount of \$74,500 in accordance with the terms of this Consent Agreement and Final Order.

STEVEN
JAWGIEL

Digitally signed by
STEVEN JAWGIEL
Date: 2020.09.04
10:06:54 -07'00'

Date: _____

Steven Jawgiel
Regional Judicial Officer
U.S. EPA, Region 9

CERTIFICATE OF SERVICE

This is to certify that the CONSENT AGREEMENT and FINAL ORDER in the matter of *Pacific Seafood-Eureka, LLC (CWA-09-2020-0049)* has been filed with the Regional Hearing Clerk, and a copy was served on both Respondent and Counsel for EPA by email, as indicated below:

RESPONDENT

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aaron.courtney@stoel.com

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Pacific Seafoods-Eureka, LLC
TDalPonte@PacificSeafood.com

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Steven Armsey
Regional Hearing Clerk
EPA Region 9